

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

CHAD CASO,

Plaintiff,

v.

TYRONE OLSON,

Defendant.

OPINION and ORDER

21-cv-550-jdp

Plaintiff in this copyright infringement case, Chad Caso, moves for default judgment against defendant Tyrone Olson, seeking damages, injunctive relief, and attorney fees and costs. Dkt. 17. A review of Caso's submissions reveals two issues with his motion. First, Caso's fee request does not comply with this court's procedures, which require fee petitions to be accompanied by billing logs, among other things. Those procedures are available on the court's website, <https://www.wiwd.uscourts.gov/judge-specific-procedures>.

Second—and more important—it appears that Caso may not be entitled to statutory damages or attorney fees. Under the Copyright Act, statutory damages and attorney fees are available only if the copyrighted work was registered prior to the commencement of the infringement. 17 U.S.C. § 412. In this case, Caso alleges that Olson began infringing on Caso's "Round Logo" design before he registered his copyright in May 2020. *See* Dkt. 18, ¶ 13. Caso contends that statutory damages and attorney fees are available because Olson produced new merchandise with the Round Logo design after Caso registered his copyright. This court hasn't uncovered any Seventh Circuit cases addressing how § 412 applies to infringement that continues after registration. But every court of appeals to consider the issue has concluded that plaintiffs may not recover statutory damages and attorney fees for infringements that

commenced after registration if the same defendant commenced an infringement of the same work prior to registration. *See Derek Andrew, Inc. v. Poof Apparel Corp.*, 528 F.3d 696, 701 (9th Cir. 2008) (collecting cases).

The court will allow Caso to submit materials addressing these issues before scheduling a hearing on the motion for default judgment. Caso may have until June 21, 2022, to submit (1) an amended petition for attorney fees that complies with the court's procedures; and (2) a brief addressing whether attorney fees and statutory damages are available in this case.

ORDER

IT IS ORDERED that Plaintiff Chad Caso may have until June 21, 2022, to submit materials addressing the issues identified in this opinion. If Caso does not respond by then, the court will deny the motion for attorney fees and set the case for a default hearing.

Entered May 31, 2022.

BY THE COURT:

/s/

JAMES D. PETERSON
District Judge